

District Judge Thomas S. Zilly

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KEIRTON USA, INC., a Washington  
Corporation,

Plaintiff,

v.

U.S. CUSTOMS AND BORDER  
PROTECTION, a federal agency,

Defendant.

Case No. C21-0224-TSZ

DEFENDANT'S RESPONSE TO  
PLAINTIFF'S SUPPLEMENTAL  
BRIEFING AND MATERIALS

On April 2, 2021, Plaintiff filed supplemental materials and commentary regarding the jurisdiction of the Court of International Trade ("CIT"). *See* Dkt. No. 26. The case Plaintiff relies on ("*Root Sciences*") ultimately appears to involve whether or not a seizure occurred. Dkt. No. 26-1 at 2 ("[T]he merchandise was allegedly seized by CBP on February 10. The Government did not dispute our claim that we were never served with the notice of seizure...."). It appears that the claimant is arguing that the merchandise was deemed excluded—for which the claimant filed a protest before seeking a remedy before the CIT—and apparently the Government is arguing the items were seized. *Id.* at 8 (Statement of Facts at ¶ 11 *et seq.*). As the Government explained in its opposition and during oral argument in this matter, there is no seizure involved here.

1 A seizure involves a different statutory and regulatory scheme. If U.S. Customs and  
 2 Border Protection (“CBP”) seizes merchandise, an interested party may then ask CBP to refer the  
 3 matter to the U.S. Attorney’s Office to initiate a judicial forfeiture proceeding.  
 4 19 U.S.C. § 1608. Even in that situation, however, there is no independent right to seek  
 5 declaratory judgment outside of this statutory scheme. *See* Dkt. No. 19 (“Opp.”), at 10, n.2  
 6 (citing *LKQ Corp. v. United States Dep’t of Homeland Sec.*, 369 F. Supp. 3d 577, 588 (D. Del.  
 7 2019 (“[The] Court [] is bound by the statutory scheme codified in the customs laws and was  
 8 provided by notice to the Plaintiffs.”); *see also City of Oakland v. Lynch*, 798 F.3d 1159, 1166  
 9 (9th Cir. 2015) (“The forfeiture proceeding, and not a collateral action, is the proper venue to  
 10 seek such relief.”). If Keirton filed an action in CIT related to the present exclusion, the  
 11 Government will not argue that there was a seizure or that CIT lacks jurisdiction. *See* Opp. at 10  
 12 (citing *H & H Wholesale Servs., Inc. v. United States*, 30 C.I.T. 689, 692 (2006) (explaining  
 13 jurisdictional differences between a seizure and an exclusion)).

14 Further, Plaintiff’s materials appear to support the Government’s position. The claimant  
 15 in *Root Sciences* recognized CIT’s exclusive jurisdiction over all matters involving an exclusion.  
 16 Dkt. No. 26-1 at 5, ¶ 2. Nor do these materials support any exception to this exclusive grant of  
 17 jurisdiction. As the Government previously explained in its briefing (Opp. at 10-14) and during  
 18 oral argument, if a party does not file a protest, then any exclusion is “final and conclusive.”  
 19 19 U.S.C. § 1514(a)(4). Congress specifically granted jurisdiction over actions involving  
 20 protests to the CIT. 28 U.S.C. § 1581(a). Therefore, a district court is “divested of jurisdiction”  
 21 over any actions involving exclusions. *K-Mart Corp. v. Cartier, Inc.*, 485 U.S. 176, 182–83  
 22 (1988). This involves exclusions that are protested or “protestable.” *See* Opp. at 12 (citing *See*  
 23 *Int’l Fid. Ins. Co. v. Sweet Little Mexico Corp.*, 2010 WL 11545232, at \*7 (S.D. Tex. Dec. 2,  
 24 2010), *aff’d*, 665 F.3d 671 (5th Cir. 2011) (“Matters that are protested or ‘protestable’ are within  
 25 the exclusive jurisdiction of the Court of International Trade...the Court finds that it does not  
 26 have jurisdiction to hear these allegations and dismisses SLM’s claims against CBP.”)). While  
 27 courts once recognized a narrow exception to this jurisdictional grant based on “adequate

1 remedy,” that limited exception no longer exists after the Supreme Court’s holding in *Cartier*.  
2 *See, e.g.,* Opp. at 14 (*citing Earth Island Inst. v. Christopher*, 6 F.3d 648, 652 (9th Cir. 1993)).  
3 And even if this narrow exception did survive *Cartier*, it does not include financial hardship.  
4 *Jerlian Watch Co. v. U.S. Dep’t of Com.*, 597 F.2d 687, 692 (9th Cir. 1979) (“Plaintiffs’  
5 allegations of financial impossibility, even if accepted as true, do not place them within the  
6 ‘adequate remedy’ exception.”).

7 The Government is able to provide additional briefing or materials regarding this or any  
8 other relevant issue, should the Court desire.

9 DATED this 5th day of April, 2021.

10 Respectfully submitted,

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12 Acting United States Attorney

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